

**MINUTES
of the
FOURTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**October 20-21, 2011
Room 307, State Capitol**

The fourth meeting of the Courts, Corrections and Justice Committee was called to order by Senator Peter Wirth, co-chair, on October 20, 2011 at 10:10 a.m. in Room 307, State Capitol.

Present

Sen. Peter Wirth, Co-Chair
Rep. Al Park, Co-Chair
Sen. Rod Adair (October 21)
Rep. Joseph Cervantes
Rep. Gail Chasey
Rep. Zachary J. Cook
Rep. Nate Gentry
Sen. Linda M. Lopez
Rep. Antonio "Moe" Maestas
Sen. Richard C. Martinez
Rep. William "Bill" R. Rehm (October 20)

Absent

Rep. David L. Doyle
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Sen. John C. Ryan
Rep. Mimi Stewart

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Thomas A. Anderson
Rep. Brian F. Egolf, Jr.
Rep. Dennis J. Kintigh
Rep. W. Ken Martinez (October 20)
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. William H. Payne (October 20)
Sen. John Pinto
Sen. Sander Rue (October 20)
Rep. Sheryl Williams Stapleton

Rep. Cathrynn N. Brown
Sen. Carroll H. Leavell
Sen. Michael S. Sanchez
Sen. David Ulibarri
Rep. Richard D. Vigil

Guests Legislator

Speaker Ben Lujan (October 21)

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Maha Khoury, Staff Attorney, Legislative Council Service (LCS)
Leslie Porter, Research Assistant, LCS

Guests

A copy of the guest list is in the meeting file.

Handouts

Copies of the handouts can be found in the meeting file.

Thursday, October 20

Update From the Judicial Compensation Commission

Kevin K. Washburn, dean, University of New Mexico School of Law, explained that the Judicial Compensation Commission is an unfunded, independent commission that was created by the legislature in 2004 to recommend judicial salaries for judges. He said that the commission has repeatedly found that judicial salaries in New Mexico are the lowest in the nine-state region (Texas, Utah, Arizona, Nevada, Kansas, Oklahoma, Colorado, Wyoming and New Mexico) and among the lowest in the United States. He stated that in order to continue to attract qualified judges and encourage them to remain on the bench, this issue must be addressed. Mr. Washburn explained the statutory requirements of the various salary requirements for New Mexico judges and highlighted the fact that the salaries are not adjusted due to location, docket or cost of living, nor are they adjusted for seniority.

Mr. Washburn informed the committee that the commission unanimously adopted recommendations and reviewed the commission's recommendations on judicial compensation, which includes a five-year plan for increasing the salary of the judges in modest incremental steps. Mr. Washburn also discussed judicial retirement and said that docket fees are currently a source of pension funding. Mr. Washburn mentioned several studies that recommend abolishing this practice. He also stated that New Mexico judges contribute a higher percentage of their salary to judicial retirement within the nine-state region, except for Wyoming, yet they do not receive a correspondingly higher retirement benefit. He added that a better, revised retirement plan would attract well-qualified judges in the peak of their careers, as opposed to retired judges and young professionals, as is currently the case. Details of the commission's recommendations can be found in the handout in the meeting file. Mr. Washburn informed the committee that the first step that needs to be taken is to approve a 2% judicial salary increase for fiscal year 2012.

Committee members asked questions and discussed policy options. They also asked whether the commission recommended part-time magistrate judges as a cost-savings method, and Mr. Washburn stated that the commission has not studied judicial staffing or districting issues. Committee members asked if the commission has ideas on where the state can generate the revenue to increase its contribution to judicial retirement. Mr. Washburn responded that the commission has not developed these ideas, but there was a proposal in House Bill 58 last session, which it is asking to be considered again. While several members acknowledged that

New Mexico judges are underpaid, an observation was made that this five-year plan will still result in judges being underpaid in five years.

Update to the Workload Measurement Study for the Judiciary, District Attorneys and Public Defenders

Linda Freeman, deputy director, New Mexico Sentencing Commission (NMSC), stated that the workload measurement study was initially completed in June 2007 and was overseen by the NMSC, which received a one-time appropriation from the New Mexico Legislature. She said the courts and public defenders workload study was completed by the National Center for State Courts, and the district attorneys' workload study was completed by the American Prosecutors Research Institute. She said the study was designed to measure the staffing needs of each agency *independently*, based on annual filings or dispositions. Ms. Freeman clarified that when possible, the same case types were used for comparison. She highlighted that the judicial component includes civil and criminal cases. She explained that a weighted methodology was used, meaning that more serious cases were given higher weights. She also stated that the information has been updated annually by the NMSC with information provided by each agency.

Concerning the findings, the courts, district attorneys and public defenders were understaffed when the results of the study are compared with actual staffing. Committee members asked for clarification on several points, engaged in discussion and had several questions about the staffing of the public defenders as compared with the staffing of the district attorneys.

Report from the Judiciary: Unified Budget and Proposed Legislation

Charles W. Daniels, chief justice, New Mexico Supreme Court, stated that the total requested increases for the judiciary amount to a 4% budget increase. He said the goal is not to padlock the doors of justice. He stated that legislation was enacted in the 2011 legislative session to approve an additional judgeship that was desperately needed, and due to the financial crisis, the 30 other needed judgeships could not be provided. Currently, the judiciary has identified five new judgeships that are critically needed: two judges in the Second Judicial District; two judges in the Thirteenth Judicial District; and one judge in the Bernalillo County Metropolitan Court.

Arthur W. Pepin, director, Administrative Office of the Courts (AOC), explained a summary of the set of budgets comprising the judiciary. He said the judiciary is requesting a \$5 million general fund increase, or 4%. He stated that court employees have not yet been furloughed, but many courts have to close during regular business hours in order to complete paperwork. Mr. Pepin said that the two most significant requests are a \$1.8 million increase in the budget for the AOC and a \$3.1 million budget increase for the courts. He informed the committee that if these budget requests are not fulfilled, fiscal year 2012 may see furloughs. Giving a breakdown of the requested funds, Mr. Pepin said that \$240,000 will be used to fill eight of the 25 clerk vacancies and that the remaining \$3 million will be used to hire other necessary personnel. Mr. Pepin informed the committee that the courts are currently experiencing an 11% vacancy rate, and the goal is to reduce that to 8%. He drew the

committee's attention to a pie chart, illustrating that the courts received 2.48% of general fund appropriations in fiscal year 2012, and he assured the committee that the requested \$5 million will not overbudget the courts. Mr. Pepin briefly discussed the needs of the problem-solving courts and capital and supplemental funding requests. He added that the supreme court is asking for supplemental funding.

Mr. Pepin went over the proposed legislation. He explained that the new judgeships should not be created until January 2013, after the election, to prevent judges from serving for only a few months and to attract better candidates. Mr. Pepin explained the need to create a judicial nominating commission fund in the AOC to provide for the costs of nominating commissions rather than having the law school fund that process. He discussed the need for a distribution from the liquor excise tax to fund drug and DWI courts, the judicial retirement funding bill and funding for background checks on criminal defendants in metropolitan court.

Committee members raised questions and discussed various topics. Members expressed concern about the funding for the specialty courts and asked questions about the proposed legislation. They also discussed court funding for the redistricting process. Chief Justice Daniels clarified that he recused himself from the redistricting litigation and could not speak about it, but he said that this funding was never included in a budget request. Several members discussed how fees should not be used to fund the courts.

Working Lunch: Demonstration of the Odyssey Program

Steve Prisoc, judiciary chief information officer, explained that this program is one of the efforts to modernize the court system. He said that in 2004, it became apparent that the New Mexico judiciary needed a new statewide case management system, and now, the judiciary needs an application to serve as a basis for e-filing, e-documents and e-payments. Discussing the success factors, he said that the system is multilayered and includes appellate and trial courts, court clerks and administrators and information technology representatives. He said this is a detailed, hands-on and adaptive approach to project management that supports the highest levels of the judiciary. An e-filing time line was given, illustrating that 100% of statewide civil findings will be able to be e-filed by December 2012.

Mr. Prisoc gave a step-by-step program tutorial. He illustrated the options while using the system, including viewing the case detail, case events, case disposition, case warrants and judges' notes. He said that New Mexico is among the first states to use e-filing on a statewide basis, and he said that many states are using Odyssey on some level.

Mr. Prisoc discussed the benefits to the filing community of using this system, including reduced delivery costs, a quick e-filing process, improved document control and security and tracking. In sum, he said e-filing saves time for attorneys and the courts, reduces lines in the courthouse, reduces physical filings or scanning of documents and reduces error handling for all parties involved. He said that the quantified savings to the courts are still being calculated.

Committee members asked for clarification and discussed several issues with the system.

Judicial Reengineering Commission: Report and Recommendations

Chief Justice Daniels said he met with the National Center for State Courts, a national think tank, to discuss reengineering New Mexico's judicial system. He said the court appointed an 18-member commission with members representing all branches of government. The group was tasked to study how to improve what the courts do in any capacity and on any level. He explained that there was no predetermined goal. Chief Justice Daniels said that the process has taken one year, and the commission has completed its report.

Chief Justice Daniels elaborated on the commission's recommendations. The first initiative is traffic citation reform. Giving an historical perspective, he explained that since automobiles had not been not invented as the original court system was modeled, it was not designed to handle traffic citations. He explained that it may not make sense to treat traffic citations the same as criminal proceedings, for they burden the courts. Mr. Pepin stated that the recommendation is to change the entire traffic citation system and eliminate the Motor Vehicle Division's involvement. Mr. Pepin discussed bill draft #8, which is a constitutional amendment allowing the legislature to determine where appeals from courts lower than the district court would go. Right now, the Constitution of New Mexico demands that all such appeals go to district court. This amendment would allow the legislature to find a better way to handle these appeals. Chief Justice Daniels stated that bill draft #9 amends the traffic code to allow more items to be treated as penalty assessments rather than criminal misdemeanors.

Chief Justice Daniels explained the second initiative, a best practices committee to identify and implement best practices for case management. The third initiative, to merge municipal courts into magistrate courts on a voluntary basis, was also explained by Chief Justice Daniels. He said this would reduce the redundancy of magistrate and municipal courts, for both courts hear the same types of cases while both incur infrastructure and operating costs.

Video proceedings was the fourth initiative reviewed by Chief Justice Daniels. He said the AOC has developed a strong and accurate two-way video and audio communications network within the courts for video arraignments in most magistrate courts as well as for statewide meetings and training of court personnel. Despite the possible limitations of the constitutional right to confrontation, the commission believes that the expansion of this system of video proceedings would allow a great deal of litigation, short of trial, to take place in this manner. The committee was given a broad overview of the fifth through ninth initiatives by Chief Justice Daniels.

Committee members asked questions and discussed policy options. Some members offered suggestions on several initiatives, and a few discussed the choice of forum in DWI cases and the costs of subsequent incarceration. Chief Justice Daniels and Mr. Pepin answered questions and joined the discussion on various issues.

Alternative Dispute Resolution (ADR) Initiative in the Courts

Edward L. Chavez, justice, New Mexico Supreme Court, and chair of the Supreme Court ADR Commission, stated that increasing the resolution of cases by ADR in New Mexico is

necessary. He discussed court-annexed ADR, mediation and arbitration. Justice Chavez discussed the one-year study that was done around the state and in different courts that found that the use of court-annexed ADR increased settlements and dispositions while decreasing costs. Justice Chavez stated that the surveys taken of lawyers indicated that 51% said it would help in criminal cases and 63% said it should be mandatory in civil cases. He discussed the increased number of pro se filings, especially in domestic relations cases, and talked about the need for uniformity in guidelines for ADR in New Mexico.

Committee members echoed the sentiments of Justice Chavez and discussed the authority of the New Mexico Supreme Court to require ADR for litigants statewide, the superintending control powers of the New Mexico Supreme Court and the Supreme Court ADR Commission developing uniform guidelines. Justice Chavez stated that the courts prefer to enact change with a scalpel rather than with a machete and said he expects all courts to implement ADR at some point.

Public Comment

There was no public comment.

Friday, October 21

Crossroads for Women: Path to Successful Reintegration

KC Quirk, executive director, Crossroads for Women, explained that the organization is located in Albuquerque and is a provider of housing and reintegration services for women who are released from prison. She gave a brief background of the organization, stating that it was founded in 1997 by Elizabeth Simpson with a \$75,000 case settlement and designed to address the trend that women released from prison were returning to prison shortly after release. Ms. Simpson discovered that the reason for recidivism is that women were leaving prison without a safety net. Ms. Quirk said that the women released from prison were homeless, addicted and had cognitive disabilities due to physical abuse. She elaborated, stating that national data illustrate that 80% of female inmates are survivors of domestic abuse and sexual assault. She said this trauma results in posttraumatic stress disorder, low self-esteem, violent tendencies and impaired social relationships. Ms. Simpson conducted research and developed several programs for the women to partake in and established a 12-bed, six-month intensive reintegration program for women released from prison. Ms. Quirk said the women live and engage in programming together, yet the programs are staggered. She said the staggering fosters a "buddy" program that encourages newcomers to complete the program. Ms. Quirk emphasized the critical need of establishing relationships with the women while they are incarcerated and after they graduate from the program. She said that 90% of the women that have completed the program have not returned to prison and that those who have returned to prison are returning for parole and probation violations.

Concerning funding, Ms. Quirk said that the programming and housing costs about \$60.00 a day per person. She said that funding is a constant challenge. She gave an example, stating that the mental health needs many of the women are struggling with exceed the organization's

capabilities because an on-site psychologist is not affordable. She said the operating budget is under \$1 million and funding sources include the federal Department of Housing and Urban Development, United Way, City of Albuquerque, Bernalillo County, New Mexico Behavioral Health Services and Medicaid.

Responding to several questions posed by committee members, Ms. Quirk said that the mental health redesign of Medicaid eliminated niche providers, such as Crossroads for Women, from being able to bill Medicaid for case management. She said that Senator Dede Feldman is working with Crossroads for Women to secure alternate funding. Committee members engaged in conversation with Ms. Quirk about this issue and a suggestion was made to look into community corrections funding.

Approval of Minutes

The minutes of the previous meeting were adopted by the committee.

Legislative Proposals from the Attorney General

Gary King, attorney general of New Mexico (AG), briefly explained each of the 11 bill drafts presented to the committee. Members of the committee inquired about issues found within the bills, discussed policy options, clarified language and went through sections of the bills.

Reporting of contributions and expenditures in elections was discussed. Phil Baca, assistant AG, highlighted the changes in this bill as compared to last year's version. There was a discussion on the role of the secretary of state. Seth Cohen, assistant AG, went over the amendments to the Fraud Against Taxpayers Act. The Mortgage Fair Foreclosure Act was explained, and the AG discussed some of the problems with foreclosures. AG staff elaborated on the legislation and a discussion ensued with committee members on protection of citizens. Another bill to prohibit texting while driving was discussed, and AG King stated that this is a leading cause of motor vehicle accidents. The AG also discussed two sex offender bills, and some members expressed concern about these.

Committee members discussed with the AG the house of representatives' subpoena power in impeachment proceedings. There was a concern that the AG's Office would not provide requested and subpoenaed information to the Investigatory Subcommittee of the House Rules and Order of Business Committee. A discussion on the separation of powers, constitutional officers and the differences between impeachment proceedings and criminal investigations ensued. The AG stated he thought the subpoena was too broad.

Due to time constraints, Senator Wirth suggested that the remainder of the presentation on consumer lending be delayed until the next meeting. AG King agreed.

Corrections: Welcome to Acting Secretary and Update on Request for Proposals (RFP) for Medical Services

Alfonso Solis, acting secretary of corrections, and Gregg Marcantel, acting deputy secretary of corrections, ensured the committee that the corrections system is secure. The Corrections Department has found minor problems, but they are being resolved.

In response to questions concerning the medical services RFP, Secretary Solis informed the committee that discussions and disagreements about the contract have taken place. He said that medical services are important, and he anticipates the RFP to be issued on October 28, 2011. He added that food and medical care are the two most important services that can be provided and that they are the two things that inmates want the most. He declared that he has no interest in becoming the secretary of corrections, but he said that the prisons are the state's highest liability. Secretary Solis told the committee that complaints from prisoners' families will never stop, and the question that needs to be asked constantly is whether or not those complaints are substantiated. A request was made for the department to provide a list of names and phone numbers of important department staff.

Committee members inquired about various issues, including the status of penalty assessments for contractual violations and probation and parole officer workload, overtime and vacancies. They also questioned the acting secretary and acting deputy secretary about Dismas house and the department's community corrections programs and were assured that the department will provide follow-up on these issues. Secretary Solis stated that the department is having problems with in-house paroles and is working with the governor's office on this issue. He said he is a firm believer in community organizations, for they are cheaper than building more beds within the prison system. He added that if there is a way to divert these people and help them, it should be done.

Secretary Solis indicated that the governor is planning to appoint a new secretary within the next two weeks. Committee members discussed bringing in the newly appointed secretary of corrections to the next meeting.

Adjournment

There being no further business before the committee, the fourth meeting of the Courts, Corrections and Justice Committee adjourned at 1:20 p.m.